

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA

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VS.

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NO: 4:06CR00001-1 SWW

DONNIETHA BRADFORD

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NO: 4:08CV002534 SWW

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ORDER

On May 8, 2007, Defendant Bradford pleaded guilty to conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 371. On September 14, 2007, the Court sentenced Bradford to serve 46 months in the United States Bureau of Prisons, consecutive to a term of imprisonment she is now serving in the Arkansas Department of Correction. Judgment in this case was entered on September 18, 2007, and Bradford filed a notice of appeal on September 19, 2007. Bradford's appeal is currently pending, and she is represented by counsel on appeal.

On September 12, 2008, Bradford filed a pro se motion vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 (docket entry #111). In response to Bradford's motion, the United States asserts that Bradford's motion is premature because her direct appeal is still under consideration. "Ordinary resort cannot be had to 28 U.S.C. 2255 or habeas corpus while an appeal from conviction is pending." *Masters v. Eide*, 353 F.2d 517, 518 (8th Cir.1965). A "federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *United States v. Ledbetter*, 882 F.2d 1345, 1347 (8th Cir.1989) (citation omitted). Bradford has failed to show that she will suffer prejudice unless her motion under

§ 2255 is considered now, and the Court finds no circumstances that justify consideration of the motion while Bradford's direct appeal is pending.

IT IS THEREFORE ORDERED that Defendant's motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 (docket entry #111) is DENIED WITHOUT PREJUDICE. Defendant can re-file the motion upon conclusion of her direct appeal.

IT IS SO ORDERED THIS 9TH DAY OF OCTOBER, 2008.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE